Cri A 1492/97

CF0000061672

APPEAL PRISONER

Division Bench (Circuit)

486 Name माड़वी जोगा

Name हान्दा Resident ग्राम - मरकुड़

थाना - भैरमगढ़, बस्तर

Sentenced to आजीवन कारावास on 7.8.96

Under Section 302 भा० दं०वि० by प्रथम अति० सत्र न्यायाधीश जगदलपुर

It is explained to the prisoner that if he states or wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears If the legal practitioner does not appear within seven days he may be heard at all if legal practitioner the court may proceed at once with the case and will not be obliged to give a bearing to any legal practitioner who should appear.

1. Date of application for copy of Judgement :- क्रमांक 384/दिनांक 10.8.96 क्रमांक 407 दिनांक 2.9.96, क्रं. 585 दि० 21.3.9
2. Date of which copy received :- No
3. Date on which appeal sent :- 15.5.97
4. Whether the prisoner wished to be represented or not :- Yes / No.

No. 486 Name माड़वी जोगा पि० हान्दा

Continued in जिला Jail प्रथम श्रेणी जगदलपुर

No. 647 / अपराधिक / Dated 16-5-97

Forwarded to the CHIEF JUDICIAL MAGISTRATE JAGDALPUR together with a copy of Judgement or order passed in the case for favour of transmission to the proper Applleate Court.

Superintendent-Central / Distt. / Sub-Jail.

Date of receipt in C. J. M. Office. 19/5/97

Date of receipt of record to accompany. —

Memo of Appeal of the Appellate Court. —

No. 9(2) dated 20/5/97

Forwarded to the Hble Sessions Judge JDR

C. R. MAGISTRATE

मुख्य न्यायिक दण्डाधिकारी

Date of receipt in Applieate Court

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XI-HC-22

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

5-1-2006

Mr. R.K. Jain & Mrs. Kiran Jain, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, Panel Lawyer for the State/respondent.

Heard.

Oral judgment.

By this appeal under Section 374 (2) of the Cr.P.C. accused Madvi Joga has questioned the legality of judgment of conviction and order of sentence dated 7th August, 1996, passed by the 1st Additional Sessions Judge, Jagdalpur, in Sessions Trial No.134/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing the murders of Kawasi Hirma & Kawasi Bhime, sentenced him to undergo imprisonment for life.

The prosecution case, in brief, is that Wacham Musa informed the Station House Officer, Police Station: Bedre that on 30th November, 1993, when he was at his residence at about 8 p.m. the elder daughter of Kawasi Hirma namely, Hungi, came and informed him that her father and mother have been murdered by Madvi Joga with an axe. On hearing this information, he along with Village Patel Majji Masha went to the agricultural field of Hirma and saw that the bodies of Hirma & Bhime were lying. Tati Hunga was sitting there warming himself from fire, and he saw in the light of fire that there were injuries on the neck of Hirma & Bhime and blood was oozing out of the injuries. He called two persons to watch the bodies, as it was night and the next day morning he sent village Patel Majji Masha & Tati

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Joga to call Chowkidar Sendra Jairam. The bodies of the deceased persons were shown to Jairam, as by that time night was already set in and being forest route, next day morning Majji Masha & Chowkidar Jairam were sent to lodge the report.

On receiving this report, the Station House Officer registered Crime No.5/93 under Section 302 of the I.P.C. and left for the scene of occurrence, where after giving notice to the Panchas, Panchnama of the body of Kawasi Hirma Ex.P-11 and Panchnama of the body of Kawasi Bhime Ex.P-12 were prepared. Under Ex.P-4, plain soil and blood stained soil were taken into possession from the place of occurrence. Utensils were taken into possession under Ex.P-5. While in the police custody, accused Madvi Joga gave memorandum Ex.P-2 regarding the place where he kept the weapon of offence, the axe, and same was taken into possession under Ex.P-3. Bodies of the deceased were sent for post-mortem examination to the Primary Health Centre, Budni, where Dr. Sunil Bharti (PW-7) conducted post-mortem on the bodies of Kawasi Bhime & Kawasi Hirma and prepared the post-mortem reports Ex.P-13 & P-14.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Jagdalpur, who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined eight witnesses. Statement of the accused was recorded by learned Additional Sessions Judge under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he is innocent, he has not committed the murders of Kawasi Hirma & Kawasi Bhime and he has been falsely implicated. Learned Additional Sessions

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in para 1 of this judgment.

Learned counsel for the appellant did not dispute the fact of homicidal nature of the deaths of Kawasi Hirma & Kawasi Bhime. Dr. Sunil Bharti (PW-7) has stated that he conducted post-mortem on the body of Kawasi Hirma and his report is Ex.P-13, he also conducted post-mortem on the body of Kawasi Bhime and his report is Ex.P-14, and the nature of the deaths of Kawasi Hirma & Kawasi Bhime were homicidal. Tati Hungi (PW-6) who witnessed the crime has stated that accused Joga attacked Bhime & Hirma with the axe. Therefore, in view of the evidence of PW-6 Tati Hungi and PW-7 Dr. Sunil Bharti, it is established that the deaths of Kawasi Hirma & Kawasi Bhime were homicidal in nature.

As far as the involvement of the accused in committing the murders of Kawasi Hirma & Kawasi Bhime is concerned, learned counsel for the appellant argued that PW-6 Tati Hungi has stated in her evidence that at the time of incident deceased Hirma was consuming liquor, whereas, as per the post-mortem report, no liquor was found in his stomach, therefore, this witness cannot be considered as eyewitness. In support of his arguments, learned counsel for the appellant relied upon the decision of the Apex Court in the matter of **Moti and others vs. State of U.P.** reported in **2003 SCC (Cri) 1821**. Learned counsel also argued that the incident is said to have taken place on 30th November, 1993, whereas the report was lodged on 2nd December, 1993, the delay has not been explained properly, therefore, the accused has been wrongly convicted. He also argued that from the evidence of PW-6 Tati Hungi it has come on record that deceased Hirma and the accused both were consuming liquor, on some point they started quarrelling

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and in the heat of passion, in a sudden fight, the accused attacked deceased Hirma while he was under intoxication, therefore, the case of the accused is covered under Exception IV of Section 300 of the I.P.C. as there was no intention to cause death. For this purpose, learned counsel placed reliance on the decision of the Apex Court in the matter of **Didar Singh vs. State of Haryana** reported in **1993 SCC (Cri) 725.**

On the other hand, learned counsel appearing for the State/ respondent supported the judgment of the trial Court.

In order to appreciate the arguments advanced by learned counsel for the appellant we have perused the evidence available on record and the judgment of the trial Court.

As far as the question of delay in lodging the F.I.R. is concerned, F.I.R. Ex.P-1 was lodged by Sendra Jairam & Wacham Musa. PW-2 Wacham Musa has stated in his evidence that the report Ex.P-1 was lodged by village Kotwar. Perusal of the report Ex.P-1 shows that in the report itself it has been mentioned that the incident took place in the night of 30-11-1993, the daughter of deceased persons namely, Hungi came and informed to the Sarpanch of the village about the incident. On receiving the information, the Sarpanch along with Hungi went to the place of occurrence and saw the dead bodies of Kawasi Hirma & Kawasi Bhime. Thereafter, the Sarpanch called Madvi Ayatu & Madvi Nanda from the village and asked them to watch the bodies. Next day morning he called Chowkidar Sendra Jairam from village Kerpese and he again went along with the Chowkidar and apprised him about the dead bodies, by that time it was evening, as the road to Police Station was going through a forest area and the Police Station was at a distance of 20 kms., therefore, Jairam & Wacham Musa were sent to lodge the report on the next day morning i.e. 2-12-1993. Therefore, in our

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considered opinion delay in lodging the F.I.R. has been explained reasonably. Moreover, nothing has come in the cross-examination of PW-6 Tati Hungi daughter of the deceased persons, PW-2 Wacham Musa & PW-3 Sendra Jairam that the delay was caused just to cook up a case against the accused. In the circumstances, the argument advanced by learned counsel for the accused/ appellant is without any merit.

As far as the argument of learned counsel for the appellant that there is no indication in the post-mortem report that liquor was found in the stomach of deceased Hirma is concerned, it is true that PW-6 Tati Hungi, daughter of the deceased persons, in her cross-examination has stated that the accused and deceased Hirma, her father, consumed liquor. In the post-mortem report, there is no mention that in the stomach of deceased Hirma liquor was present. It is admitted fact that the crime in question was committed in the evening of 30th November, 1993, whereas the post-mortem was conducted on 5-12-1993, thereby after five days, the post-mortem was conducted. After five days, it was difficult to detect visually whether the alcoholic substance was present in the body unless the material, which was found in the stomach, is sent for chemical examination. In view of the facts, we do not find any substance in the argument of learned counsel for the accused/appellant. The facts of the case of **Moti (supra)** are distinguishable. In the said case, the point was that the deceased took dinner just before the death, whereas, as per the post-mortem report no food was present in the stomach of the deceased and the post-mortem was conducted very next day.

Now, coming to the question that the accused was not having any intention to commit the murders of Kawasi Hirma & Kawasi Bhimo is concerned, it is also true that as per the evidence of PW-6 Tati Hungi the accused and deceased Hirma both consumed liquor and during that period

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altercation took place between the accused & deceased Hirma, and the accused attacked Hirma & Bhime with the axe, as the result of which both Hirma & Bhime died spontaneously. The intention of the accused can be gathered from the nature of injuries inflicted, part of the body where the injuries were inflicted and nature of the weapon used by the accused in the commission of crime.

PW-7 Dr. Sunil Bharti has stated in his evidence that on examination of the body of Kawasi Hirma he noticed that there was an incised wound in the size of 3" x 1" x 1" on the head, an incised wound on the temporal region in the size of 3" x 2" x 2", the brain material was coming out on account of the injuries, an incised wound below the temporal bone in the size of 2" x 1" x 2" and a compound fracture of temporal bone. In the post-mortem of Kawasi Bhime, he noticed one incised wound in the temporal bone in the size of 4" x 1" x 1", an incised wound on the occipital bone in the size of 2" x 1" x 1", brain material was coming out of the head, there was compound fracture of the temporal bone, bone of the skull was depressed and there was fracture of the occipital bone also.

It is admitted position that the accused used the axe for committing the offence. It is true that the doctor has not given the opinion that the injuries were sufficient in the ordinary course of nature to cause the death, but from the nature of the injuries, to a certain extent, the Court can also form opinion when the injuries are apparently serious in nature. In the present case, the accused used the axe as a weapon of offence and he attacked with the axe with such a force that the skull bones of deceased persons Kawasi Hirma & Kawasi Bhime were fractured and brain material came out. Therefore, it can safely be said that the nature of injuries inflicted upon both the deceased persons were so serious that those injuries were sufficient in

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the ordinary course of nature to cause death. In the circumstances, looking to the weapon of offence used, nature of injuries inflicted and the part of the bodies chosen by the accused where the injuries were caused, it indicates that the accused was having intention to commit the murder of Kawasi Hirma & Kawasi Bhime. On facts, the judgment of the Apex Court {Didar Singh (supra)} cited by learned counsel for the appellant, is distinguishable. Moreover, Kawasi Bhime, the lady, in any way had not quarreled with the accused and there was no reason for the accused to attack her so mercilessly with a lethal weapon like axe. PW-6 Tati Hungi has stated in her evidence that the accused murdered her father Hirma & mother Bhime with the axe. The accused attacked her father with the axe on his temporal region, as a result of which he fell down and with the axe he assaulted her mother when she was trying to intervene, he assaulted her mother thrice with the same axe and corresponding injuries were found on the bodies of the deceased persons, as stated by this witness. Therefore, there is no reason to doubt the presence of this witness. She has categorically stated that her parents were staying in the agricultural field in a hut meant for shelter at the time of watching the field and that hut was visible from their house.

In view of the foregoing discussion, we do not find any illegality and infirmity in the finding of the trial Court. The appeal is without any merit, same is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

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